

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON AT SPOKANE

KAY CHARLENE BENNET, aka KAY  
CHARLENE GRAHAM,

Plaintiff,

v.

ENCORE RECEIVABLE  
MANAGEMENT, INC.,

Defendant.

NO. 09-0042

ANSWER TO PLAINTIFF'S  
COMPLAINT FOR ALLEGED  
VIOLATIONS OF THE FAIR  
DEBT COLLECTION  
PRACTICES ACT AND STATE  
CONSUMER PROTECTION  
ACT

COMES NOW Defendant Encore Receivable Management, Inc., and for  
its Answer to Plaintiff's Complaint, states as follows:

I. STATEMENT OF THE CASE

1. Encore admits the statement in Paragraph 1.1 of Plaintiff's  
Complaint that Plaintiff has filed a claim for injunctive relief, but denies that  
she states a claim that would entitle her to relief.

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II. PARTIES

2. Encore lacks sufficient knowledge to admit or deny the allegations in Paragraph 2.1 of Plaintiff's Complaint and, therefore, denies the same for the present time.

3. Encore lacks sufficient knowledge to admit or deny the allegations in Paragraph 2.2 of Plaintiff's Complaint and, therefore, denies the same for the present time.

4. Encore lacks sufficient knowledge to admit or deny the allegations in Paragraph 2.3 of Plaintiff's Complaint and, therefore, denies the same for the present time.

5. Paragraph 2.4 of the Complaint states a legal conclusion. To the extent that any allegations are made against Encore, such allegations are denied.

6. Encore admits the allegations in Paragraph 2.5 of the Complaint.

7. Encore admits the allegations in Paragraph 2.6 of the Complaint.

8. Encore admits that it falls within the definition of a debt collector under the FDCPA, 15 U.S.C. § 1692a(6), but denies that the FDCPA applies to this case and denies any remaining allegations in Paragraph 2.7 of Plaintiff's Complaint.

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1 9. Encore admits the allegations in Paragraph 2.8 of the Complaint.

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3 III. JURISDICTION AND VENUE

4 10. Encore admits generally the assertion in the first unlabeled  
5 Paragraph under section III of Plaintiff's Complaint that jurisdiction and venue  
6 could properly be found in the Spokane County Superior Court. Encore asserts  
7 that this case, however, has been properly removed to the Eastern District of  
8 Washington, United States District Court, which court generally has jurisdiction  
9 over claims arising under 15 U.S.C. § 1692 et. seq. and is proper venue for this  
10 case. Encore denies that Plaintiff has any claim herein.  
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12 11. Encore denies the allegations in the second unlabeled Paragraph  
13 under section III of Plaintiff's Complaint.  
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16 IV. FACTS

17 12. Encore admits the allegations in Paragraph 4.1 of the Complaint.

18 13. Encore lacks sufficient knowledge to admit or deny the allegations  
19 in Paragraph 4.2 of Plaintiff's Complaint and, therefore, denies the same for the  
20 present time.  
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22 14. Encore lacks sufficient knowledge to admit or deny the allegations  
23 in Paragraph 4.3 of Plaintiff's Complaint and, therefore, denies the same for the  
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1 present time.

2 15. Encore lacks sufficient knowledge to admit or deny the allegations  
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4 in Paragraph 4.4 of Plaintiff's Complaint and, therefore, denies the same for the  
5 present time.

6 16. Encore lacks sufficient knowledge to admit or deny the allegations  
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8 in Paragraph 4.5 of Plaintiff's Complaint and, therefore, denies the same for the  
9 present time.

10 17. Encore denies the allegations in Paragraph 4.6 of the Complaint.  
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12 Encore further states that it has a contract to provide collection services to  
13 various creditors, and it is not the owner, assignee, or transferee of this debt.  
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15 18. Encore admits the allegations in Paragraph 4.7 of the Complaint.

16 19. Encore admits that December 23, 2008, is two days before  
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18 Christmas. Encore lacks sufficient knowledge to admit or deny the remaining  
19 allegations in Paragraph 4.8 of Plaintiff's Complaint and, therefore, denies the  
20 same for the present time.  
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22 20. Encore denies the allegations in Paragraph 4.9 of the Complaint.

23 21. Encore denies the allegations in Paragraph 4.10 of the Complaint.

24 22. Encore lacks sufficient knowledge to admit or deny the allegations  
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1 in Paragraph 4.11 of Plaintiff's Complaint and, therefore, denies the same for  
 2 the present time.  
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4 23. Encore lacks sufficient knowledge to admit or deny the allegations  
 5 in Paragraph 4.12 of Plaintiff's Complaint and, therefore, denies the same for  
 6 the present time.  
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8 24. Encore lacks sufficient knowledge to admit or deny the allegations  
 9 in Paragraph 4.13 of Plaintiff's Complaint and, therefore, denies the same for  
 10 the present time.  
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12 25. Encore denies the allegations in Paragraph 4.14 of the Complaint.  
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#### 14 V. FAIR DEBT COLLECTION PRACTICES ACT

15 (Application of the FDCPA)

16 26. Encore repeats and restates its responses in Paragraphs 1 through  
 17 25 above as if fully set forth herein.  
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19 27. Paragraph 5.2 of Plaintiff's Complaint states the law. To the  
 20 extent that any allegations are made against Encore, such allegations are denied.  
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22 28. Paragraph 5.3 of Plaintiff's Complaint states the law. To the  
 23 extent that any allegations are made against Encore, such allegations are denied.  
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25 29. Paragraph 5.4 of Plaintiff's Complaint states the law. To the

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1 extent that any allegations are made against Encore, such allegations are denied.

2 30. Encore admits that it falls within the definition of a debt collector  
3  
4 under the FDCPA, 15 U.S.C. § 1692a(6), but denies that the FDCPA applies to  
5 this case and denies any remaining allegations in Paragraph 5.5 of Plaintiff's  
6  
7 Complaint.

8 31. Encore denies the allegations in Paragraph 5.6 of the Complaint.

## 9 VI. FIRST CAUSE OF ACTION

### 10 Alleged Fair Debt Collection Practices Act Violation

11 (Alleged False, Deceptive, or Misleading Representations)

12 32. Encore repeats and restates its responses in Paragraphs 1 through  
13  
14 31 above, as if fully set forth herein.

15 33. Paragraph 6.2 of Plaintiff's Complaint states the law. To the  
16  
17 extent that any allegations are made against Encore, such allegations are denied.  
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19 34. Paragraph 6.3 of Plaintiff's Complaint states the law. To the  
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21 extent that any allegations are made against Encore, such allegations are denied.

22 35. Paragraph 6.4 of Plaintiff's Complaint states the law. To the  
23  
24 extent that any allegations are made against Encore, such allegations are denied.

25 36. Paragraph 6.5 of Plaintiff's Complaint states the law. To the

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1 extent that any allegations are made against Encore, such allegations are denied.

2 37. Encore denies the allegations in Paragraph 6.6 of the Complaint.

3 38. Encore denies the allegations in Paragraph 6.7 of the Complaint.

4 39. Encore denies the allegations in Paragraph 6.8 of the Complaint.

5 40. Paragraph 6.9 of Plaintiff's Complaint states a legal conclusion.

6 Further, Encore denies the allegations in Paragraph 6.9 of Plaintiff's Complaint.

7 41. Paragraph 6.10 of Plaintiff's Complaint states a legal conclusion.

8 Further, Encore denies the allegations in Paragraph 6.10 of the Complaint.

9 42. Encore denies the allegations in Paragraph 6.11 of the Complaint.

10 43. Encore denies the allegations in Paragraph 6.12 of the Complaint.

## 11 VII. SECOND CAUSE OF ACTION

### 12 (Alleged Unfair Harassment - Communication)

13 44. Encore repeats and restates its responses in Paragraphs 1 through  
14 43 above, as if fully set forth herein.

15 45. Paragraph 7.2 of Plaintiff's Complaint states the law. To the  
16 extent that any allegations are made against Encore, such allegations are denied.

17 46. Encore denies the allegations in Paragraph 7.3 of Plaintiff's  
18 Complaint.

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1 47. Encore denies the allegations in Paragraph 7.4 of the Complaint.

2 48. Encore denies the allegations in Paragraph 7.5 of the Complaint.

3 49. Encore denies the allegations in Paragraph 7.6 of the Complaint.

4 50. Encore denies the allegations in Paragraph 7.7 of the Complaint.

5 51. Encore denies the allegations in Paragraph 7.8 of the Complaint.

6 52. Encore denies the allegations in Paragraph 7.9 of the Complaint.

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VIII. THIRD CAUSE OF ACTION

(Alleged State Collection Agency Act Violation)

53. Encore repeats and restates its responses in Paragraphs 1 through 52 above, as if fully set forth herein.

54. Paragraph 8.2 of Plaintiff's Complaint states the law. To the extent that any allegations are made against Encore, such allegations are denied.

55. Paragraph 8.3 of the Complaint makes a legal conclusion. To the extent that any allegations are made against Encore, such allegations are denied.

56. Encore denies the allegations in Paragraph 8.4 of the Complaint.

57. Encore denies the allegations in Paragraph 8.5 of the Complaint.

58. Encore denies the allegations in Paragraph 8.6 of the Complaint.

59. Encore denies the allegations in Paragraph 8.7 of the Complaint.

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IX. FOURTH CAUSE OF ACTION

(Alleged Consumer Protection Act Violation)

60. Encore repeats and restates its responses in Paragraphs 1 through 59 above, as if fully set forth herein.

61. Encore denies the allegations in Paragraph 9.2 of the Complaint.

62. Paragraph 9.3 of Plaintiff's Complaint states the law. To the extent that any allegations are made against Encore, such allegations are denied.

63. Paragraph 9.4 of the Complaint makes a legal conclusion. To the extent that any allegations are made against Encore, such allegations are denied.

64. Paragraph 9.5 of the Complaint makes a legal conclusion. To the extent that any allegations are made against Encore, such allegations are denied.

65. Encore denies the allegations in Paragraph 9.6 of the Complaint.

66. Paragraph 9.7 of Plaintiff's Complaint purports to quote a case, and makes a legal conclusion. To the extent that any allegations are made against Encore, such allegations are denied.

67. Paragraph 9.8 of the Complaint makes a legal conclusion. To the extent that any allegations are made against Encore, such allegations are denied.

68. Paragraph 9.9 of the Complaint makes a legal conclusion. To the

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1 extent that any allegations are made against Encore, such allegations are denied.

2 69. Paragraph 9.10 of the Complaint makes a legal conclusion. To the  
3  
4 extent that any allegations are made against Encore, such allegations are denied.

5 70. Paragraph 9.11 of the Complaint purports to quote a case. To the  
6  
7 extent that any allegations are made against Encore, such allegations are denied.

8 71. Paragraph 9.12 of the Complaint makes a legal conclusion.  
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10 Further, Encore denies the allegations in Paragraph 9.12 of the Complaint.

11 72. Paragraph 9.13 of the Complaint purports to state the law. To the  
12  
13 extent that any allegations are made against Encore, such allegations are denied.

14 73. Paragraph 9.14 of the Complaint purports to state the law. To the  
15  
16 extent that any allegations are made against Encore, such allegations are denied.

17 74. Encore denies the allegations in Paragraph 9.15 of the Complaint.

18 75. Paragraph 9.16 of Plaintiff's Complaint makes a legal conclusion.  
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20 Further, Encore denies the allegations in Paragraph 9.16 of the Complaint.

21 76. Paragraph 9.17 of Plaintiff's Complaint makes a legal conclusion.  
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23 Further, Encore denies the allegations in Paragraph 9.17 of the Complaint.

24 77. Paragraph 9.18 of Plaintiff's Complaint makes a legal conclusion.  
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26 Further, Encore denies the allegations in Paragraph 9.18 of the Complaint.

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1 78. Encore denies the allegations in Paragraph 9.19 of the Complaint.

2 79. Encore denies the allegations in Paragraph 9.20 of the Complaint.

3 80. Encore denies the allegations in Paragraph 9.21 of the Complaint.

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5 X. FIFTH CAUSE OF ACTION

6 (Alleged FDCPA - Outrage Violation)

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8 81. Encore repeats and restates its responses in Paragraphs 1 through  
9 80 above, as if fully set forth herein.

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11 82. Paragraph 10.2 of the Complaint makes a legal conclusion. To the  
12 extent that any allegations are made against Encore, such allegations are denied.

13 83. Encore denies the allegations in Paragraph 10.3 of the Complaint.

14 84. Encore denies the allegations in Paragraph 10.4 of the Complaint.

15 85. Encore denies the allegations in Paragraph 10.5 of the Complaint.

16 86. Encore denies the allegations in Paragraph 10.6 of the Complaint.

17 87. Encore denies the allegations in Paragraph 10.7 of the Complaint.

18 88. Encore denies the allegations in Paragraph 10.8 of the Complaint.

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20 XI. PRAYER FOR RELIEF

21 89. Encore denies that Plaintiff is entitled to any of the relief requested  
22 in section XI, including sub-paragraphs A, B, C, D, E, F, G, H, I, J, K, and L.

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XII. REQUEST FOR TRIAL BY JURY

90. Encore denies that Plaintiff has any claim herein and, therefore, is not entitled to a jury trial in this action.

XII. AFFIRMATIVE DEFENSES

1. The Complaint fails to state a claim upon which relief can be granted.

2. Defendant Encore affirmatively states that it maintains thorough training procedures for all employees who participate in collection communications. Any collection communication, which allegedly violated the Fair Debt Collection Practices Act is subject to a bona fide error defense.

WHEREFORE, Encore Receivable Management, Inc. prays that Plaintiff's Complaint be dismissed with prejudice, for its attorney's fees and costs incurred herein, and for such further and other relief as the Court deems just and equitable.

DATED this 18th day of February, 2009.

/s/ Stephen A. Bernheim

Stephen A. Bernheim, WSBA #15225  
Attorney for Encore Receivable  
Management, Inc.

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